

ASSEMBLY BILL

No. 1261

Introduced by Assembly Member Audra Strickland

February 27, 2009

An act to amend Sections 3030 and 3030.5 of the Family Code, relating to child custody.

LEGISLATIVE COUNSEL'S DIGEST

AB 1261, as introduced, Audra Strickland. Child custody and visitation: registered sex offenders.

Existing law provides that no person shall be granted physical or legal custody of, or unsupervised visitation with, a child if the person is required to be registered as a sex offender under the Sex Offender Registration Act, if the victim was a minor, or if the person has been convicted under specified other criminal provisions, including injuring or molesting a child, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record. In addition, no person may be granted physical or legal custody of, or unsupervised visitation with, a child if anyone residing in the person's household is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record. Existing law also provides that the child may not be placed in a home in which a person described above resides, nor permitted to have unsupervised visitation with that person, unless the court states the reasons for its findings in writing or on the record. Existing law authorizes, upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with,

a child, to be modified or terminated if the circumstances described above have arisen, as specified, since the order was entered, unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record.

This bill would delete the court's discretion in the cases described above, thereby prohibiting the court from granting a person physical or legal custody of, or unsupervised visitation with, a child if the person is a registered sex offender or has been convicted of specified criminal offenses, and prohibiting the court from placing the child in a home in which that person resides. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3030 of the Family Code is amended to
2 read:

3 3030. (a) (1) No person shall be granted physical or legal
4 custody of, or unsupervised visitation with, a child if the person
5 is required to be registered as a sex offender under Section 290 of
6 the Penal Code where the victim was a minor, or if the person has
7 been convicted under Section 273a, 273d, or 647.6 of the Penal
8 Code, ~~unless the court finds that there is no significant risk to the~~
9 ~~child and states its reasons in writing or on the record.~~ The child
10 may not be placed in a home in which that person resides, nor
11 permitted to have unsupervised visitation with that person, ~~unless~~
12 ~~the court states the reasons for its findings in writing or on the~~
13 ~~record.~~

14 (2) No person shall be granted physical or legal custody of, or
15 unsupervised visitation with, a child if anyone residing in the
16 person's household is required, as a result of a felony conviction
17 in which the victim was a minor, to register as a sex offender under
18 Section 290 of the Penal Code, ~~unless the court finds there is no~~
19 ~~significant risk to the child and states its reasons in writing or on~~
20 ~~the record.~~ The child may not be placed in a home in which that
21 person resides, nor permitted to have unsupervised visitation with
22 that person, ~~unless the court states the reasons for its findings in~~
23 ~~writing or on the record.~~

1 ~~(3) The fact that a child is permitted unsupervised contact with~~
2 ~~a person who is required, as a result of a felony conviction in which~~
3 ~~the victim was a minor, to be registered as a sex offender under~~
4 ~~Section 290 of the Penal Code, shall be prima facie evidence that~~
5 ~~the child is at significant risk. When making a determination~~
6 ~~regarding significant risk to the child, the prima facie evidence~~
7 ~~shall constitute a presumption affecting the burden of producing~~
8 ~~evidence. However, this presumption shall not apply if there are~~
9 ~~factors mitigating against its application, including whether the~~
10 ~~party seeking custody or visitation is also required, as the result~~
11 ~~of a felony conviction in which the victim was a minor, to register~~
12 ~~as a sex offender under Section 290 of the Penal Code.~~

13 (b) No person shall be granted custody of, or visitation with, a
14 child if the person has been convicted under Section 261 of the
15 Penal Code and the child was conceived as a result of that violation.

16 (c) No person shall be granted custody of, or unsupervised
17 visitation with, a child if the person has been convicted of murder
18 in the first degree, as defined in Section 189 of the Penal Code,
19 and the victim of the murder was the other parent of the child who
20 is the subject of the order, unless the court finds that there is no
21 risk to the child's health, safety, and welfare, and states the reasons
22 for its finding in writing or on the record. In making its finding,
23 the court may consider, among other things, the following:

24 (1) The wishes of the child, if the child is of sufficient age and
25 capacity to reason so as to form an intelligent preference.

26 (2) Credible evidence that the convicted parent was a victim of
27 abuse, as defined in Section 6203, committed by the deceased
28 parent. That evidence may include, but is not limited to, written
29 reports by law enforcement agencies, child protective services or
30 other social welfare agencies, courts, medical facilities, or other
31 public agencies or private nonprofit organizations providing
32 services to victims of domestic abuse.

33 (3) Testimony of an expert witness, qualified under Section
34 1107 of the Evidence Code, that the convicted parent experiences
35 intimate partner battering.

36 Unless and until a custody or visitation order is issued pursuant
37 to this subdivision, no person shall permit or cause the child to
38 visit or remain in the custody of the convicted parent without the
39 consent of the child's custodian or legal guardian.

(d) The court may order child support that is to be paid by a person subject to subdivision (a), (b), or (c) to be paid through the local child support agency, as authorized by Section 4573 of the Family Code and Division 17 (commencing with Section 17000) of this code.

(e) The court shall not disclose, or cause to be disclosed, the custodial parent's place of residence, place of employment, or the child's school, unless the court finds that the disclosure would be in the best interest of the child.

SEC. 2. Section 3030.5 of the Family Code is amended to read:

3030.5. (a) Upon the motion of one or both parents, or the legal guardian or custodian, or upon the court's own motion, an order granting physical or legal custody of, or unsupervised visitation with, a child ~~may~~ *shall* be ~~modified or~~ terminated if either of the following circumstances has occurred since the order was entered, ~~unless the court finds that there is no significant risk to the child and states its reasons in writing or on the record:~~

(1)

(a) The person who has been granted physical or legal custody of, or unsupervised visitation with the child is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

(2)

(b) The person who has been granted physical or legal custody of, or unsupervised visitation with, the child resides with another person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code.

~~(b) The fact that a child is permitted unsupervised contact with a person who is required, as a result of a felony conviction in which the victim was a minor, to be registered as a sex offender under Section 290 of the Penal Code, shall be prima facie evidence that the child is at significant risk. When making a determination regarding significant risk to the child, the prima facie evidence shall constitute a presumption affecting the burden of producing evidence. However, this presumption shall not apply if there are factors mitigating against its application, including whether the party seeking custody or visitation is also required, as the result of a felony conviction in which the victim was a minor, to register as a sex offender under Section 290 of the Penal Code.~~

1 ~~(e) The court shall not modify an existing custody or visitation~~
2 ~~order upon the ex parte petition of one party pursuant to this section~~
3 ~~without providing notice to the other party and an opportunity to~~
4 ~~be heard. This notice provision applies only when the motion for~~
5 ~~custody or visitation change is based solely on the fact that the~~
6 ~~child is allowed unsupervised contact with a person required, as~~
7 ~~a result of a felony conviction in which the victim was a minor, to~~
8 ~~register as a sex offender under Section 290 of the Penal Code and~~
9 ~~does not affect the court's ability to remove a child upon an ex~~
10 ~~parte motion when there is a showing of immediate harm to the~~
11 ~~child.~~

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